

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL SEINSEVIN

Appeal No. 2003-0021
Application No. 08/983,383

HEARD: MAY 20, 2003

Before COHEN, FRANKFORT, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 15, 16, and 19 through 37. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a method of growing one row of vines so as to avoid frost damage and to promote good fruiting, and to a method of facilitating grape ripening on a row of vines after the vines have been grown to the beginning of ripening without being covered by film. A basic understanding of

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the invention can be derived from a reading of exemplary claims 15, 28, and 34 through 37, respective copies of which appear in the APPENDIX to the main brief (Paper No. 28).

As evidence of obviousness, the examiner has applied the documents listed below:¹

Horner	1,930,939	Oct. 17, 1933
Buckles	2,842,898	Jul. 15, 1958
Morssinkhof et al (Morssinkhof)	4,798,023	Jan. 17, 1989
Hugonnard-Bruyere et al (France) (Bruyere)	2,281,717	Mar. 12, 1976
Bollinger et al (Switzerland) (Bollinger)	513,575	Oct. 15, 1971

The following rejections are before us for review.

Claims 15, 16, 19 through 26, 28, 30, 31, and 34 through 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruyere in view of Bollinger and Morssinkhof.

¹ Our understanding of the French and Swiss documents is derived from a reading of translations thereof prepared in the United States Patent and Trademark Office. Respective copies of the translations are appended to this opinion.

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Claims 27 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruyere in view of Bollinger and Morssinkhof, as applied to claims 26 and 28 above, further in view of Buckles.

Claims 29 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruyere in view of Bollinger and Morssinkhof, as applied to claims 28 and 31 above, further in view of Horner.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the final rejection and the answer (Paper Nos. 17 and 23), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 28 and 25).

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered

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appellant's specification and method and structure claims, the applied teachings,² and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follow.

We cannot sustain the rejections on appeal.

In rejecting each of appellant's independent claims under 35 U.S.C. § 103(a), the examiner has proposed to modify the vine growing method and structure of Bruyere based upon the teachings of Bollinger and Morssinkhof. Bruyere's method for the protection of vineyards from spring frost involves placement of plastic film or sheet over a frame fastened to existing vine stakes by ordinary nails. As to appellant's spreader element feature, the examiner refers us in Bruyere to elements with welded hooks intended to receive and support wires; one such

² In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

element in Fig. 1, and two such elements in Fig. 14.

Appropriately, the examiner recognizes that Bruyere lacks the now claimed features of spreader elements which divide each film panel into a top portion and a bottom portion and at least one top portion being perforated with orifices for ventilation (Paper No. 17, page 3).

To overcome these shortcomings of the primary reference, the examiner relies upon spreader elements (horizontal carriers 7) used in the plant protection arrangement of the Bollinger reference (Figs. 2 and 3), and protective plastic sheet/film with perforations/microperforations for plants as taught by Morssinkhof (Figs. 7 through 9).

We certainly appreciate the claim relevant features focused upon by the examiner in each of the applied references, i.e., spreader elements and plastic film (with and without orifices). However, the difficulty that we have with the rejection of the independent claims on appeal is that, like appellant (reply brief, page 2), it readily appears to us that it is premised upon an improper hindsight reconstruction. More specifically, when we set aside in our minds that which appellant taught us in the

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present application, it is clear to this panel of the board that the rejection requires, in effect, a wholesale revision of the method and underlying structure explicitly taught in the Bruyere reference, and necessitates following appellant's teaching, rather than any suggestions for the noted selective spreader element and plastic film modifications from the combined prior art teachings themselves. It is for the above reason that the rejection of appellant's independent method claims and dependent method and structure claims is not sound. Lastly, we note that the additional references to Buckles and Horner fail to overcome the deficiencies of the earlier discussed applied prior art.

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In summary, this panel of the board has not sustained the
respective obviousness rejections on appeal.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

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BAKER & BOTTS
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112